BILL NO. S-86-06-20

SPECIAL ORDINANCE NO. S-104-86

ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE
TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE BOND,
SERIES 1986 "(MARK P. SHAMBAUGH PROJECT)"
AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Fort Wayne Economic Development Commission has rendered its Project Report for the Mark P. Shambaugh Project regarding the financing of proposed economic development facilities for Mark P. Shambaugh and the Fort Wayne Plan Commission has commented favorably thereon; and

WHEREAS, the Fort Wayne Economic Development Commission conducted a public hearing on March 6, 1986, and also adopted a resolution on June 5, 1986, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Mark P. Shambaugh complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City of Fort Wayne and its citizens; and

WHEREAS, the Fort Wayne Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Loan Agreement, Mortgage and Security Agreement, Note, Trust Indenture, Lease, Conditional Assignment of Lease and Rentals, Consent to Lease Assignment and Guaranty Agreement; now therefore,

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, THAT:

SECTION 1. It is hereby found that the financing of the economic development facilities referred to in the Loan Agreement, Mortgage and Security Agreement approved by the Fort Wayne Economic

Development Commission and presented to this Common Council, the issuance and sale of a revenue bond, the loan of the proceeds of the revenue bond to Mark P. Shambaugh (the "Developer") for the acquisition, construction and equipping of such facilities, the payment of the revenue bond by the note payments of the Developer under the Loan Agreement, Mortgage and Security Agreement and Note, the leasing of such facilities to Shambaugh & Son, Inc. under the Lease, the guaranty of payment of principal and interest on the revenue bond by Shambaugh & Son, Inc. under the Guaranty Agreement, and the securing of said bond by the mortgaging of such facilities to the Trustee under the Trust Indenture complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and will be of benefit to the health and welfare of the City of Fort Wayne and its citizens.

SECTION 2. The economic development facilities will consist of the acquisition, construction and equipping of a new warehouse, fabrication and office facility, to be used in the Developer's construction engineering business, to be located on the northwest corner of Cook Road and the vacated Conrail railroad, just north of Smith Field, in Fort Wayne, Indiana. The Developer will lease such facilities to Shambaugh & Son, Inc. (the "Project").

SECTION 3. At the public hearing held by the Fort Wayne Economic Development Commission, the Commission considered whether the economic development facilities would have an adverse competitive effect on any similar facilities located in or near the City of Fort Wayne, and found, based on special findings of fact set forth in the Resolution transmitted hereto, that the facilities would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution, and concludes that the economic development facilities will not have an adverse competitive effect on any other similar facilities in or near the City of Fort Wayne, and the facilities will be of benefit to the health and welfare of the citizens of the

City of Fort Wayne.

SECTION 4. The substantially final forms of the Loan Agreement, Mortgage and Security Agreement, Note, Trust Indenture, Lease, Conditional Assignment of Lease and Rentals, Consent to Lease Assignment and Guaranty Agreement approved by the Fort Wayne Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk for public inspection.

SECTION 5. The City of Fort Wayne shall issue its Economic Development Revenue Bond, Series 1986 (Mark P. Shambaugh Project) in the total principal amount not to exceed Three Million One Hundred Thousand Dollars ($3,100,000.00) pursuant to this election to do so under Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and maturing fifteen years from the date of the first principal payment. Said bond is to be issued for the purpose of procuring funds to pay the costs of acquisition, construction and equipping of the economic development facilities as more particularly set out in the Trust Indenture and Loan Agreement, Mortgage and Security Agreement incorporated herein by reference, which bond will be payable as to principal, premium, if any, and interest from the note payments made by the Developer under the Loan Agreement, Mortgage and Security Agreement and Note or as otherwise provided in the above described Trust Indenture. The bond shall be issued in fully registered form in the full amount actually issued and shall be redeemable as provided in Article V of the Trust Indenture. Payments of principal and interest are payable in lawful money of the United States of America at the principal office of the

Trustee or its successor in trust or by check or draft mailed or delivered to the registered owner as provided in the Trust Indenture. The bond shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Fort Wayne, nor is the bond payable in any manner from revenues raised by taxation.

SECTION 6. The Mayor and Clerk are authorized and directed to sell such bond to the purchaser thereof at a Rate of interest per annum on the bond not to exceed 75% of the Reference Rate of Fort Wayne National Bank, as in effect at its principal office, (except, (i) in the event interest on the bond becomes taxable due to a Determination of Taxability, as defined in the Loan Agreement, Mortgage and Security Agreement, the interest on the bond will increase to the Taxable Rate, as defined in the Loan Agreement, Mortgage and Security Agreement, and (ii) the interest rate on the bond may be adjusted as set forth in the Loan Agreement, Mortgage and Security Agreement) as the result of certain yield affecting events; and at a price of not less than 100% of the principal amount thereof.

SECTION 7. The Mayor and Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the bond authorized herein. The Mayor and Clerk are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of the City Attorney; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and

attestation thereof or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on or term of the bond as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk on the bond may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such bond to the Trustee named in the Trust Indenture, and payment for the bond will be made to the Trustee named in the Trust Indenture and after such payment the bond will be delivered by the Trustee to the purchaser thereof. The Mayor and Clerk shall execute and the Clerk shall deliver the bond to the Trustee within ninety days of the adoption of this ordinance. The bond shall be originally dated as of June 1, 1986, but shall have as an issue date the date of authentication by the Trustee.

SECTION 8. The provisions of this Ordinance and the Trust Indenture securing the bond shall constitute a contract binding between the City of Fort Wayne and the holder of the Economic Development Revenue Bond, Series 1986 (Mark P. Shambaugh Project), and after the issuance of said bond, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said bond or the interest thereon remains unpaid.

SECTION 9. Special Ordinance No. S-43-86 adopted on March 25, 1986 is hereby repealed.

SECTION 10. This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

COUNCILMAN

ADOPTED BY ECONOMIC DEVELOPMENT COMMISSION AND APPROVED AS TO FORM.

John J. Wernet, Attorney for the Economic Development Commission
Dated this 9th day of June, 1986.

APPROVED AS TO FORM AND LEGALITY

Bruce O. Boxberger, City Attorney
Dated this 9th day of June, 1986.

Read the first time in full and on motion by Gia Quinta, seconded by Redd, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____.M.,E.S.

DATE: 6-10-86

Nadyda Eskorf
~~SANDRA E. KENNEDY, CITY CLERK~~
Deputy Clerk

Read the third time in full and on motion by Redd, seconded by Eskorf, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8			1	
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA				✓	
HENRY	✓				
REDD	✓				
SCHMIDT	✓				
STIER	✓				
TALARICO	✓				

DATE: 6-24-86

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) (~~ZONING~~ MAP) ORDINANCE (~~RESOLUTION~~) NO. S-104-86 on the 24th day of June, 1986,

ATTEST: (SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of June, 1986, at the hour of 11:00 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 26 day of June, 1986, at the hour of 10 o'clock A.M.,E.S.T.

[signature]
WIN MOSES, JR., MAYOR

BILL NO. S-86-06-20

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN (ORDINANCE) (~~RESOLUTION~~) AUTHORIZING THE CITY OF FORT WAYNE TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE BOND, SERIES 1986 "(MARK P. SHAMBAUGH PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (~~RESOLUTION~~)

YES		NO
	MARK E. GiaQUINTA CHAIRMAN	
	CHARLES B. REDD VICE CHAIRMAN	
	PAUL M. BURNS	
	JANET G. BRADBURY	
	JAMES S. STIER	

CONCURRED IN 6-24-86

SANDRA E. KENNEDY
CITY CLERK